

Message Text

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FOR MTN

E.O. 11652: N/A

TAGS:ETRD; EAGR; GATT; MTN

SUBJECT: MTN DAIRY SUBGROUP MEETING, MAY 30, 1978

THE TRADE POLICY STAFF COMMITTEE HAS APPROVED THE POSITION
PAPER (TPSC 78-66) FOR THE SUBJECT MEETING AS FOLLOWS:

1. PROBLEM. THE SUBGROUP WILL MEET DURING THE WEEK OF MAY
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30 TO CONTINUE DISCUSSION OF AN INTERNATIONAL DAIRY ARRANGE-
MENT (IDA), INCLUDING A NEW GATT SECRETARIAT DRAFT (MTN/DP/
W/REV. 4). A SECRETARIAT PAPER HIGHLIGHTING THE LEGAL
ISSUES OF AN IDA RELATIVE TO THE GENERAL AGREEMENT WILL ALSO
BE DISCUSSED (MTN/DP/W/35). IN ADDITION, COUNTRIES ARE
EXPECTED TO PRESENT VIEWS ON THREE PAPERS PRESENTED AT THE
LAST SUBGROUP MEETING: (1) A NEW ZEALAND PAPER ON MINIMUM
EXPORT PRICING (MTN/DP/W/34); (2) AN AUSTRALIAN WORKING
PAPER ON ESTABLISHING MINIMUM PRICES FOR CERTAIN MILK
POWDERS, AND (3) AN AUSTRALIAN PROPOSAL FOR A MINIMUM PRICE

MECHANISM FOR CHEESE.

2. FINALLY, THE SUBGROUP WILL REVIEW THE WORK OF THE GROUP OF EXPERTS WHICH MET DURING THE WEEK OF MAY 16 TO DISCUSS CERTAIN TECHNICAL ISSUES RELATED TO AN IDA.

U.S. OBJECTIVES

THE MAJOR U.S. OBJECTIVE IS TO PARTICIPATE CONSTRUCTIVELY IN THE TASK OF DEVELOPING AN ACCEPTABLE TEXT FOR AN IDA WHILE STILL RESERVING U.S. PARTICIPATION IN SUCH AN AGREEMENT DEPENDING ON THE FACTORS OUTLINED BY THE U.S. DEL AT THE LAST SUBGROUP MEETING (GENEVA 6587, PARA 5). WE SEEK TO HAVE SUCH A TEXT ESSENTIALLY COMPLETED BY JULY 15.

U.S. POSITION

1. THE U.S. DEL SHOULD BE GUIDED BY THE FOLLOWING BASIC U.S. POSITION ON AN IDA.

A. THE U.S. IS NOT A DEMANDEUR ON DAIRY PRODUCTS BUT RECOGNIZES THE INTEREST OF OTHER COUNTRIES IN AN IDA. WE FIND THE DRAFT PROVISIONS FOR INFORMATION AND CONSULTATION LIMITED OFFICIAL USE
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BASICALLY ACCEPTABLE SO LONG AS IT CLEARLY PROVIDES THAT THE PROPOSED DAIRY COUNCIL AND ANY OTHER ADMINISTRATIVE BODIES UNDER THE ARRANGEMENT WOULD OPERATE ON THE BASIS OF CONSENSUS AND THAT ANY OF THEIR RECOMMENDATIONS WOULD BE IMPLEMENTED BY MEMBER COUNTRIES ON A VOLUNTARY BASIS.

B. MANDATORY MINIMUM EXPORT PRICES AS THE PRIMARY ECONOMIC OBLIGATION OF AN INTERNATIONAL COMMODITY ARRANGEMENT IS NOT A CONCEPT ABOUT WHICH WE ARE ENTHUSIASTIC. WE RECOGNIZE, HOWEVER, THE INTEREST OF OTHER COUNTRIES IN THIS APPROACH AND THE SPECIAL PROBLEMS OF THE DAIRY SECTOR TO WHICH IT IS DIRECTED. THUS, WE WISH TO CONTINUE CONSTRUCTIVE DISCUSSION OF MINIMUM EXPORT PRICES ON MILK POWDERS AND MILKFAT. MAXIMUM PRICES, HOWEVER, MAKE LITTLE SENSE IN THE PRESENT WORLD DAIRY CONTEXT, WOULD SERIOUSLY COMPLICATE REACHING AGREEMENT, AND MIGHT NOT BE POSSIBLE FOR THE U.S. TO ADMINISTER WITHOUT NEW LEGISLATION THAT WOULD PROBABLY BE IMPOSSIBLE TO OBTAIN.

MINIMUM PRICE PROVISIONS FOR NON-HOMOGENEOUS PRODUCTS (SUCH AS CHEESE) DO NOT APPEAR FEASIBLE BECAUSE PRODUCT DIFFERENTIATION AND IMPERFECT SUBSTITUTABILITY CREATE DIFFERENCES IN PRICING UNRELATED TO FAT CONTENT OR OTHER SIMPLE PHYSICAL CHARACTERISTICS. SUCH PROVISIONS ARE NOT DESIRABLE BECAUSE CHEESE IS NOT IN CHRONIC WORLD SURPLUS AND IS SUBJECT TO LESS GOVERNMENT INTERVENTION THAN ARE

BUTTER AND POWDERS.

C. THE U.S. IS PROCEEDING IN REQUEST/OFFER NEGOTIATIONS ON DAIRY PRODUCTS AS PART OF THE OVERALL MTN NEGOTIATIONS ON MARKET ACCESS. WE BELIEVE THAT TRADE COMMITMENTS IN THE DAIRY SECTOR ARE FEASIBLE AND NECESSARY FOR A SUCCESSFUL MTN. WE FURTHER BELIEVE THAT ALL COMMITMENTS CONCERNING TERMS OF MARKET ACCESS MUST BE SUBJECT TO RELEVANT

GATT PROVISIONS AND, IN PARTICULAR, TO THE UNCONDITIONAL LIMITED OFFICIAL USE
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MFN OBLIGATION OF ARTICLE I WHICH REMAINS THE CORNERSTONE OF THE GENERAL AGREEMENT. WE THUS CONTINUE TO HAVE SERIOUS RESERVATIONS CONCERNING "CONCERTED DISCIPLINES" AS PROPOSED FOR ANNEX III (PROTOCOL REGARDING CHEESE) WHICH, IN LIGHT OF PREVIOUS DISCUSSION IN THE SUBGROUP, APPARENTLY COULD OPERATE BEYOND THE DISCIPLINE OF ARTICLE I AND PERHAPS OTHER GATT PROVISIONS. WE ARE NONETHELESS OPEN TO FURTHER DISCUSSION OF HOW CHEESE TRADE COMMITMENTS MIGHT BE INCORPORATED INTO, OR REFLECTED IN, AN IDA WITHOUT HAVING THIS RESULT.

D. THE U.S. BELIEVES THAT GENERAL SOLUTIONS TO SUCH BROAD GATT ISSUES AS SUBSIDIES/COUNTERVAILING, SAFEGUARDS, STANDARDS (INCLUDING HEALTH AND SANITARY RESTRICTIONS) ARE BEING DEVELOPED WHICH CAN ADEQUATELY COVER THE AGRICULTURAL SECTOR, INCLUDING DAIRY PRODUCTS. HOWEVER, WE ARE PREPARED TO CONSIDER ANY PROPOSALS FOR SPECIFIC PROVISION IN A DAIRY ARRANGEMENT IF THEY CAN BE DEMONSTRATED TO USEFULLY SUPPLEMENT OR COMPLEMENT GENERAL RULES IN THESE AREAS.

2. ADDITIONAL GUIDANCE ON SELECTED ISSUES IS PROVIDED IN THE DISCUSSION. HOWEVER, BECAUSE THE NEW SECRETARIAT TEXT AND GATT LEGAL ISSUES PAPER WERE RECEIVED IN WASHINGTON TOO LATE FOR DETAILED REVIEW AND INTER-AGENCY DISCUSSION, THE U.S. DEL MAY ON ITS OWN INITIATIVE SUGGEST DRAFTING CHANGES AND OTHERWISE SEEK TO ADVANCE WORK ON AN AGREED TEXT OF AN IDA COMPATIBLE WITH THE ABOVE BASIC U.S. POSITION AND WITH PAST GUIDANCE (TPSC 78-21 AND 78-53). AS APPROPRIATE, DEL AGREEMENT ON SUBSTANTIVE DRAFTING CHANGES MAY BE ON AN AD REFERENDUM BASIS.

DISCUSSION
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THE FOLLOWING REFERS TO REV. 4 OF MTN/DP/W/27.

PART I

1. THE PROVISIONS OF ARTICLES I THROUGH IV ARE BASICALLY ACCEPTABLE IN THEIR PRESENT FORM AND THE U.S. DEL SHOULD BE FLEXIBLE IN ACCOMMODATING REVISIONS THAT DO NOT PREJUDICE SUBSTANTIVE U.S. INTERESTS. HOWEVER, THE DEL SHOULD POINT OUT THAT ARTICLE I AS WRITTEN IS MISLEADING IN CHARACTERIZING THE OBJECTIVES OF THE TOKYO DECLARATION SOLELY IN TERMS OF A "REGULAR" EXPANSION OF WORLD TRADE UNDER "STABLE" CONDITIONS. THE FIRST STATED AIM OF THE TOKYO DECLARATION IS TO "ACHIEVE THE EXPANSION AND EVER-

GREATER LIBERALIZATION OF WORLD TRADE...THROUGH THE PROGRESSIVE DISMANTLING OF OBSTACLES TO TRADE AND THE IMPROVEMENT OF THE INTERNATIONAL FRAMEWORK FOR THE CONDUCT OF WORLD TRADE."

2. FOR ARTICLES V (A) THROUGH (D) THE GUIDANCE PROVIDED IN TPSC 78-21 REMAINS VALID. WE ARE NOT YET PREPARED TO TAKE A POSITION ON SEPARATE CODE-RELATED PROVISIONS FOR A DAIRY ARRANGEMENT.

IF THE EC RAISES, AS IT DID AT THE LAST DAIRY MEETING, THE QUESTION OF WHETHER THE DAIRY AGREEMENT WOULD COUNT AS A CONTRIBUTION TO THE SUBSIDY PROBLEM, THE U.S. MAY REPLY THAT THE MINIMUM PRICE PART OF AN IDA WOULD NOT BE A SIGNIFICANT CONTRIBUTION TOWARD RESOLVING THE SUBSIDY ISSUE, SINCE THE MINIMUM PRICES ARE SO FAR BELOW COUNTRIES' DOMESTIC PRICES. HOWEVER, OTHER PARTS OF AN IDA COULD CONCEIVABLY PROVIDE A CONTRIBUTION, IF THEY CONTAINED MEANINGFUL SUBSIDY DISCIPLINES.

3. ARTICLE V(E) IS BASICALLY ACCEPTABLE ALTHOUGH THE US LIMITED OFFICIAL USE
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DEL SHOULD NOTE THAT ADVANCE NOTIFICATION OF THE SCALE OF US DAIRY FOOD AID PROGRAMS WOULD BE PARTLY DEPENDENT ON THE TIMING OF CONGRESSIONAL ACTION AND THAT ACTUAL PROGRAMMING WOULD BE SUBJECT TO REVISION DURING THE YEAR.

4. ARTICLE V(F) SHOULD BE AMENDED TO PROVIDE THAT COUNTRIES COULD, AT LEAST IN CASE OF URGENCY, HAVE RECOURSE TO NORMAL GATT DISPUTE SETTLEMENT PROCEDURES WITHOUT WAITING FOR THE CONCLUSION OF PROCEDURES UNDER THE ARRANGEMENT.

5. PART III - ANNEX I. PROTOCOL REGARDING MILK PRODUCTS

(A) PRODUCT COVERAGE

THE U.S. HAS NO OBJECTION IN PRINCIPLE TO THE INCLUSION OF

BUTTERMILK POWDER, CASEIN OR OTHER PRODUCTS WHICH, IF LEFT OUT, COULD REPRESENT LOOPHOLES TO MINIMUM PRICE PROVISIONS. THE U.S. DEFERS TO OTHER COUNTRIES WITH STRONGER INTERESTS IN THIS ISSUE. HOWEVER, IT MUST BE MADE CLEAR THAT IF THE US WERE TO PARTICIPATE IN THIS PROTOCOL, IT COULD RESPECT MINIMUM PRICES ONLY TO THE EXTENT THAT U.S. GOVERNMENT PRICE SUPPORT PROGRAMS PERMITTED THIS. SINCE THERE ARE NO US PROGRAMS FOR PRODUCTS OTHER THAN NFD, BUTTER AND CHEESE, THE US WOULD NOT UNDERTAKE TO MAINTAIN MINIMUM EXPORT PRICES FOR CASEIN, WHEY POWDER, OR OTHER PRODUCTS. EVEN IN THE CASE OF PRICE-SUPPORTED PRODUCTS, THE US WOULD NOT UNDERTAKE TO DIRECTLY CONTROL THE EXPORT PRICES OF PRIVATE TRADERS. HOWEVER, AS A PRACTICAL MATTER, SO LONG AS WORLD

MINIMUM PRICES UNDER AN ARRANGEMENT WERE LOWER THAN US SUPPORT PRICES, NO PRIVATE US EXPORTS BELOW THE MINIMUM PRICE WOULD TAKE PLACE.

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(B) MINIMUM/MAXIMUM PRICES - ARTICLE III,1-3

THE US OPPOSES MAXIMUM PRICES. AS TO THE LEVEL OF MINIMUM PRICES, THE U.S. BELIEVES THAT TWO FACTORS SHOULD BE GIVEN PARTICULAR WEIGHT. FIRST, GIVEN THE PROBLEM OF EXTENSIVE MALNUTRITION IN MANY PARTS OF THE WORLD, SURPLUS MILK POWDERS ARE TOO VALUABLE TO BE DISPOSED OF FOR ANIMAL FEED AND SHOULD BE DIRECTED TO MEETING HUMAN NEEDS. THIS MEANS THAT MINIMUM PRICES SHOULD BE SET LOW ENOUGH TO ENCOURAGE HUMAN UTILIZATION AND THAT DEROGATIONS SHOULD BE PRIMARILY FOR FOOD AID PROGRAMS RATHER THAN FOR ANIMAL FEEDING. A CONSTRAINT ON THIS GUIDELINE IS THE NEED TO PROVIDE A MINIMUM PROFITABLE RETURN TO EFFICIENT PRODUCERS WHICH SHOULD BE ENABLED TO REMAIN FULLY ENGAGED IN WORLD TRADE ON AN UNSUBSIDIZED BASIS. WE THUS BELIEVE THAT PRODUCTION COSTS IN OCEANIA WOULD BE OF PARTICULAR RELEVANCE AS AN INDICATOR. WE PREFER THIS APPROACH TO THE QUASI-INDEXING APPROACH SUGGESTED BY NEW ZEALAND AT THE LAST MEETING, ALTHOUGH WE WOULD BE INTERESTED IN HEARING NEW ZEALAND'S FURTHER VIEWS ON THIS. THE US WOULD PREFER A MODIFIED VERSION OF THE SECOND ALTERNATIVE OF PARA 3 WHICH WOULD INCLUDE THE PRODUCTION COST GUIDELINES SUGGESTED ABOVE BUT WOULD DELETE THE LINKAGE TO US AND EC SUPPORT PRICES. THE U.S. HAS NO OBJECTION TO ANNUAL REVIEWS OF THE MINIMUM PRICE LEVEL.

(C) ADJUSTMENT OF MINIMUM PRICES - ARTICLE III, 4

ADJUSTMENT OF PRICES FOR PRODUCTS WITH PHYSICAL CHARACTERISTICS DIFFERENT FROM PILOT PRODUCTS, DIFFERENT PACKAGING TERMS OF SALE, ETC. POSES A DIFFICULT PROBLEM WHICH CAN

NEVER BE COMPLETELY RESOLVED. THE US MAY SUPPORT THE SECOND ALTERNATIVE ON MILK FAT CONTENT SINCE IT APPEARS LESS ARBITRARY THAN THE FIRST, BUT MAY AGREE AD REFERENDUM TO ANY FORMULATION THAT DOES NOT DISCRIMINATE AGAINST US PRODUCTS.

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(D) EXPORTS FOR ANIMAL FEED - ARTICLE III, 5

THE US WOULD LIKE TO SEE THIS ARTICLE AMENDED TO FURTHER DISCOURAGE DEROGATIONS FOR ANIMAL FEEDING. THE SECOND ALTERNATIVE IS NOW THE STRONGEST BUT MIGHT BE IMPROVED BY ADDING A PROVISION THAT A COUNTRY SEEKING SUCH A DEROGATION MUST FIRST SUBMIT INFORMATION DEMONSTRATING THE INFEASIBILITY OF DIRECTING THE PRODUCT IN QUESTION TO FOOD AID

PURPOSES.

(E) TRANSACTIONS OTHER THAN COMMERCIAL - ARTICLE III, 8

THIS ARTICLE WOULD PERMIT THE TYPE OF TRANSACTIONS REPRESENTED BY THE RECENT US SALE OF NFDN TO MEXICO AND IS ACCEPTABLE. HOWEVER, THE US DEL SHOULD SEEK CLARIFICATION OF HOW "DEVELOPING COUNTRIES" WOULD BE DEFINED UNDER THE ARRANGEMENT.

(F) PROVISION OF INFORMATION - ARTICLE IV

INFORMATION PROVIDED BY THE US UNDER ARTICLE IV WOULD PERTAIN ONLY TO US GOVERNMENT PROGRAMS.

(G) CO-OPERATION OF IMPORTING COUNTRIES - ARTICLE VI

THE US HAS NO MECHANISM FOR ENSURING THAT IMPORTS OF THE PRIVATE SECTOR RESPECT MINIMUM PRICES. THE US COULD, HOWEVER, PROVIDE INFORMATION ON IMPORT UNIT VALUES OF SPECIFIC TRANSACTIONS ON A CONFIDENTIAL AND LIMITED BASIS FOR SPECIFIC PROBLEMS ARISE. WITH THIS UNDERSTANDING THE US COULD ACCEPT THE FIRST ALTERNATIVE, BUT SHOULD OPPOSE THE LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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SECOND WHICH WOULD REQUIRE AN UNACCEPTABLE DEGREE OF GOVERNMENT INTERVENTION IN PRIVATE TRADE.

(H) COMMITMENTS - ARTICLE VII

THE US RESERVES ON ARTICLE VII AS WE ARE STILL STUDYING ITS GATT IMPLICATIONS. THE US DEL SHOULD AGAIN SEEK CLARIFICA-

TION AS TO WHY THIS SECTION IS NEEDED SINCE IT APPEARS TO DEAL ONLY WITH GATT-BOUND ACCESS COMMITMENTS WHICH COULD STAND INDEPENDENT OF THE PROPOSED ARRANGEMENT.

6. ANNEX II. PROTOCOL REGARDING MILK FAT.

THE US POSITION ON THIS PROTOCOL IS SIMILAR TO THE ABOVE POSITION ON ANNEX I. THE MAJOR DIFFERENCE IS THAT THE NUTRITIONAL FACTOR IS A RELATIVELY LESS IMPORTANT FACTOR IN SURPLUS DISTRIBUTION THAN IN THE CASE OF MILK POWDERS (ALTHOUGH IT IS STILL IMPORTANT AND CLEARLY LINKED TO NFDM BECAUSE OF THE GROWING IMPORTANCE OF RECONSTITUTED FLUID MILK IN DEVELOPING COUNTRIES). IN CONSIDERING THE LEVEL OF MINIMUM PRICES, THEREFORE, THE US WOULD GIVE RELATIVELY GREATER WEIGHT TO THE NEED TO MAINTAIN REASONABLE RETURNS TO EFFICIENT PRODUCERS AND WOULD AGAIN LOOK TO OCEANIA FOR INDICATIVE DATA.

7. ANNEX III. PROTOCOL REGARDING CHEESE

US RESERVATIONS ON THIS PROTOCOL HAVE BEEN DESCRIBED IN DETAIL IN TPSC 78-21 AND 78-53. SINCE US-EC BILATERAL DISCUSSIONS COVERING CHEESE ARE SCHEDULED TO TAKE PLACE SEPARATELY AND CONCURRENT WITH THE SUBGROUP MEETING, THE US DEL SHOULD CONTINUE TO RESERVE THE US POSITION WHILE STRESSING THE IMPORTANCE OF PRESERVING THE INTEGRITY OF GATT OBLIGATIONS CONCERNING TRADE CONCESSIONS.

8. ANNEX IV. PROTOCOL REGARDING OTHER DAIRY PRODUCTS.
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THE US SHOULD RESERVE ON THIS ANNEX SINCE IT IS STILL EXAMINING ITS GATT IMPLICATIONS. THE US DEL SHOULD SEEK TO CLARIFY WHY THIS ANNEX IS NEEDED SINCE IT APPEARS TO DEAL WITH TRADITIONAL GATT CONCESSIONS AND TO ADD NO NEW SUBSTANTIVE DIMENSION TO THEM. IF SUCH A NEW DIMENSION IS INTENDED, THIS SHOULD BE NOW MADE CLEAR OR THE US WILL OPPOSE THIS ARTICLE ON GROUNDS THAT IT SPECIFIES ONLY ONE RELEVANT GATT PROVISION TO THE EXCLUSION OF OTHERS.

9. ANNEX V. RESULTS OF NEGOTIATIONS EXTRACTED FROM SCHEDULES.

THE US UNDERSTANDS THAT THE PURPOSE OF THIS ANNEX WOULD BE SIMPLY INFORMATIONAL--TO SUMMARIZE IN ONE DOCUMENT THE EXTANT SCHEDULES OF DAIRY CONCESSIONS OF ALL COUNTRIES. THE US HAS NO OBJECTION TO THIS CONCEPT.

PART III.

THE ONLY PURPOSE OF THIS SECTION IS TO MAKE THE ANNEXES AN

INTEGRAL PART OF THE OVERALL ARRANGEMENT. THE MAJOR ISSUE
FOR THE US IS HOW THIS MIGHT IMPINGE ON ITS ABILITY TO
ADHERE SELECTIVELY TO PROVISIONS OF ANY EVENTUAL AGREEMENT.
THE US DEL MAY NOTE THE ISSUE, BUT NOT PURSUE A SOLUTION
AT THIS TIME.

PART IV.

ARTICLE VIII. THE EXISTING LANGUAGE (INCLUDING BRACKETS)
IS BASICALLY ACCEPTABLE TO THE US.

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ARTICLE IX. THE US DEL SHOULD AGAIN NOTE THE ISSUE OF
SELECTIVE ADHERENCE TO THE ARRANGEMENT THAT IS RAISED BY
PARA 4. HE SHOULD RESERVE ON PARA 5B WHILE THE US CON-
TINUES TO EXAMINE THE LEGAL IMPLICATIONS OF AN ARRANGEMENT

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